

APPLICANT'S REPLY

Election/Restriction

"1. Restriction to one of the following inventions is required under 35 U.S.C. 121:"

Pursuant to 37 CFR 1.143, I request reconsideration and withdrawal or modification of the requirement for election/restriction.

"I. Claim 1, drawn to a method of propulsion and attitude control for V/STOL aircraft, classified in class 244, subclass 12.3."

Claim 1, is drawn to a method of propulsion and attitude control applicable to fluid environments including both gaseous, atmospheric air, and liquid, marine, environments. The method of submersible descent is described in the last part of the second subsection of this claim.

"II. Claim 2-13, drawn to a vehicle with dual propulsion, classified in class 244, subclass 12.3."

Claim 2, is drawn to a vehicle which utilizes the above-mentioned methodology of propulsion and attitude control in fluid environments. Propulsion and control in all fluid environments is achieved by the same means and by the same method as mentioned in claim I. There is no dual propulsion as it is a matter of fluid density of the surrounding medium that differentiates the application of the methodology in regards to the propelling and controlling of the vehicle. One vehicle may be so designed as to encompass all regimes of propulsion and control: conventional flight, V/STOL flight, WIG/WISE flight, marine surface, and marine submersible or the vehicle may be so designed as to excel in any given regime with the specified regime's/environment's fluid density and characteristics in mind.

Claims 3-13, describe dependent possible variations of and/or modifications that may be made to the vehicle so that it may be specialized for role and performance.

"Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05 (h)). In the instant case the method of propulsion can be used for marine surface vehicles, marine submersibles and conventional aircraft."

Addressing: ***"(1) the process for using the product as claimed can be practiced with another materially different product"***

The process for using the product is symbiotic to the product, or, in other words, the application of the methodology is crucial to the vehicle and vice versa. As mentioned before, the vehicle may be designed to encompass all regimes of fluid locomotion and control, the invention is an amalgamation of the vehicles mention in the Office Action, with the capability of being specialized for a given role, regime or environment.

Addressing: ***"(2) the product as claimed can be used in a materially different process of using that product"***

The product as claimed can be used only in fluid, a subset of matter including gases and liquids, mediums.

"Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even thought the requirement be traversed (37 CFR 1.143)."

In the event that this request for traversal pursuant to 37 CFR 1.143 be denied and such decision become final, I elect invention II to be the invention designated for further prosecution.

"2. If invention identified above II is elected, applicant is further required under 35 USC 121 to elect one of the following disclosed species for persecution on the merits to which the claims shall be restricted if no generic claims is finally held to be allowable. Currently, claim 1 is generic.

- a. *the embodiment (figs. 1a-c) drawn two-cell vehicle.*
- b. *the embodiment (figs. 2a-2c) drawn three-cell vehicle.*
- c. *the embodiment (figs. 3a-3c) drawn four-cell vehicle.*

Applicant is advised that a reply to these requirements must include an identification of the species that is elected consonant with this requirement and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.”

Species “a. *the embodiment (figs. 1a-c) drawn two-cell vehicle*” is elected consonant with this requirement and claims 2-13 are readable thereon.

“Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes is indicated as proper.”

This invention is comprised of two independent subjects that are not distinct but symbiotic, and are not divergent in subject matter as all embodiments utilize the same methodology and relative structures that comprise the vehicles for propulsion and control in fluid environments, albeit allowing for modifications which will allow for improved performance should one fluid regime or fluid environment be selected as a primary operating regime or environment.

“Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in depend form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the

prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the invention."

The species are not patentably distinct and are obvious variants of the same vehicle.

Conclusion

As it is a requirement of a non-provisional utility patent application to identify the best method or process to achieve the desired performance for a given patentable product, and as such a requirement thereby in part defines the utility of said product, to remove the ability to claim the method or process in which a product is made to function, effectively creates a situation in which all utility patents that are not allowed to claim both method/process of using the product as well as the preferred embodiment of a product are simply drawn-out descriptions for a design patent or a theory lacking the rudimentary requirements for a utility patent.

Form and function define utility, without one or the other there is no patentable invention only a design or theory. Should it be the decision in this case that process and product are patentably distinct, then the requirements to identify the best process of use for an invention and the preferred embodiment of an invention makes one or the other extraneous.

Richard Tyler Frazer

A handwritten signature in black ink, appearing to read "Richard Tyler Frazer". To the right of the signature is the date "April 27th, 2005".

Inventor: Patent Application Control # 10/642,554

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